

SERVICE DATE – APRIL 6, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36422

BRANCH LINE RAILROAD, INC.—LEASE & OPERATION EXEMPTION—
NORTHWOODS DISTRIBUTION SERVICES, INC.

Decided: April 5, 2021

For the reasons discussed below, Wisconsin Central Ltd.'s (WCL's) petition to reject the verified notice of exemption filed by Branch Line Railroad, Inc. (BLRR) will be granted, without prejudice to BLRR's filing a petition for exemption or an application.

On December 21, 2020, BLRR¹ filed a verified notice of exemption pursuant to 49 C.F.R. § 1150.31 to lease from Northwoods Distribution Services, Inc. (Northwoods), and operate approximately 3,000 feet of existing rail line and transloading facilities in Rhinelander, Wis. (the Line). By decision served on January 13, 2021, the Board postponed the effective date of the exemption pending further order of the Board and allowed BLRR to cure a deficiency in its verified notice.²

On January 21, 2021, WCL filed a petition to reject the verified notice on the grounds that it raises too many unanswered questions and is incomplete.³ (WCL Pet. 2.) First, WCL questions the actual parameters of the trackage involved in BLRR's proposal. According to WCL, although BLRR's verified notice proposes the lease and operation of approximately 3,000 feet of existing rail line, WCL argues that Northwoods owns at most approximately 2,400 feet of existing track that could be leased to BLRR. Additionally, WCL points out that the proposed lease agreement attached to the notice states that BLRR has agreed to lease 3,500 feet of track from Northwoods. (*Id.* at 2-3.) WCL questions the length of the Line, its exact location,

¹ The verified notice indicates that BLRR is a noncarrier. (*See* Verified Notice 2, 4.)

² BLRR's verified notice had not included the interchange commitment certification required by 49 C.F.R. § 1150.33(h). On January 13, 2021, BLRR filed the required certification.

³ WCL states that the notice involves two sidings, largely within WCL's right-of-way, that WCL uses to provide rail service to Northwoods pursuant to an August 1, 2003 Industry Track Agreement (the 2003 ITA) between WCL and Northwoods. (WCL Pet. 1.) According to WCL, the 2003 ITA sets forth the rights and obligations of Northwoods and WCL, and confirms the track and land ownership adjacent to the Northwoods facility. (*Id.* at 8.) While acknowledging that the Board will not undertake to enforce or interpret the 2003 ITA, WCL states that the 2003 ITA highlights the reasons why BLRR's notice is confusing and incomplete and should be rejected. (*Id.*)

and whether it includes trackage that does not currently exist but is expected to be constructed. (*Id.* at 5.) According to WCL, BLRR’s description of the Line does not satisfy the Board’s requirements for a notice of exemption under 49 C.F.R. § 1150.31. (*Id.* at 4 (citing Swanson Rail Trans. LP—Operation Exemption—Olive Investors, FD 35376, slip op at 2 (STB served May 28, 2010)).)

Second, WCL argues that the verified notice raises significant questions regarding BLRR’s ability and intention to provide rail service to Northwoods or other rail customers. (*Id.* at 5.) According to WCL, the lease is a tri-partite agreement between Northwoods, BLRR, and an unnamed sublessee, under which Northwoods would lease the Line to BLRR, which would then sublease the entirety of the track to the sublessee for railcar storage. WCL questions how a transaction in which all the trackage currently used to serve Northwoods is subleased to a third-party entity for railcar storage would accommodate continued rail service to Northwoods by WCL, BLRR, or anyone else. (*Id.* at 6.)

BLRR has not responded to WCL’s petition.

The verified notice in this proceeding was submitted under the class exemption procedures found at 49 C.F.R. § 1150.31, which provide an expedited process for obtaining authority under 49 U.S.C. § 10901. These streamlined class exemption procedures are reserved for transactions involving routine, uncomplicated, and non-controversial matters.⁴ See, e.g., N.E. Interchange Ry.—Lease & Operation Exemption—Line in Croton-on-Hudson, N.Y., FD 34734 et al., slip op. at 4 (STB served Nov. 18, 2005). Where a verified notice raises too many unanswered questions, the Board will reject it. See Perry Cnty. R.R.—Operation Exemption—Uniontown, Ala., FD 36296 (STB served June 7, 2019); FPN-USA, Inc.—Operation Exemption—Tijuana-Tecate Shortline, FD 35155, slip op. at 3 (STB served Aug. 8, 2008).

Based on a review of the record, there are unresolved questions about the accuracy of the description of trackage in the verified notice. It is unclear whether the Line is 2400, 3000, or 3500 feet long, and, depending on the amount of current trackage, whether there are plans to construct additional trackage. Further, there are unresolved questions regarding the nature of the rail service to be provided in light of the terms of the lease agreement and the involvement of an unnamed sublessee. Because the proposed transaction presents unanswered questions that require more scrutiny and the development of a more complete record, WCL’s petition will be granted and BLRR’s verified notice of exemption rejected. This decision does not preclude

⁴ The class exemption allowing noncarriers to acquire or operate a rail line was adopted to serve shippers and community interests by facilitating continued rail service, and the agency explained that the procedures were “designed to meet the need for expeditious handling of a large number of requests that are rarely opposed” and “to reduce regulatory delay and costs.” Class Exemption for the Acquis. & Operation of Rail Lines Under 49 U.S.C. 10901, 1 I.C.C.2d 810, 811-13, 817 (1985), aff’d sub nom. Ill. Commerce Comm’n v. ICC, 817 F.2d 145 (D.C. Cir. 1987).

BLRR from filing a petition for exemption or full application, provided that any such petition or application addresses the issues raised by WCL's petition and noted in this decision.

It is ordered:

1. WCL's petition to reject is granted.
2. BLRR's notice of exemption is rejected, as discussed above.
3. The decision is effective on its service date.

By the Board, Allison C. Davis, Director, Office of Proceedings.